

12-21-05

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**TRANSMITTAL  
FORM**

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission

27

Application Number

10/758,516

Filing Date

01/15/2004

First Named Inventor

Wolgast et al

Art Unit

3671

Examiner Name

Toni Newville

Attorney Docket Number

03006

**ENCLOSURES (Check all that apply)**

Fee Transmittal Form



Fee Attached



Amendment/Reply



After Final



Affidavits/declaration(s)



Extension of Time Request



Express Abandonment Request



Information Disclosure Statement



Certified Copy of Priority Document(s)

Reply to Missing Parts/  
Incomplete ApplicationReply to Missing Parts  
under 37 CFR 1.52 or 1.53

Drawing(s)



Licensing-related Papers



Petition

Petition to Convert to a  
Provisional Application

Power of Attorney, Revocation



Change of Correspondence Address



Terminal Disclaimer



Request for Refund



CD, Number of CD(s) \_\_\_\_\_



Landscape Table on CD



After Allowance Communication to TC

Appeal Communication to Board  
of Appeals and InterferencesAppeal Communication to TC  
(Appeal Notice, Brief, Reply Brief)

Proprietary Information



Status Letter

Other Enclosure(s) (please identify  
below):

Office Action dated 09/21/05

Remarks

**SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT**

Firm Name

Machetta Law Firm, P.C.

Signature

Printed name

Gary M. Machetta

Date

12/19/2005

Reg. No.

53251

**CERTIFICATE OF TRANSMISSION/MAILING**

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:

Signature

Typed or printed name

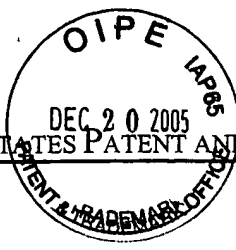
Eugene Loguallano

Date

12/19/2005

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,516	01/15/2004	William Orman Wollgast	03006	5804

39047 7590 09/21/2005  
MACHETTA LAW FIRM, P.C  
14614 FALLING CREEK DRIVE  
HOUSTON, TX 77068

EXAMINER

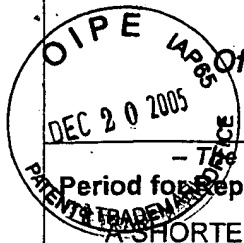
NEWVILLE, TONI E

ART UNIT PAPER NUMBER

3671

DATE MAILED: 09/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



Office Action Summary

Application No.	Applicant(s)	
10/758,516	WOLLGAST ET AL.	
Examiner	Art Unit	
Toni Newville	3671	

- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Navarro, US 6038795.

Regarding claim 1, Navarro discloses a digging attachment (10) for securement to a work-type vehicle that could be used for constructing a skimmer box for a swimming pool, comprising:

A connecting frame (17) with extensions (top and bottom arms of 17 in Fig. 2) near the bottom of said connecting frame (17) allowing for the connection to a vehicle latching mechanism;

A base (12), shaped like a box, with five sides and an open end, including: a top side, a bottom side, a left side, a right side (column 2 lines 30-33) and a back side (14) as well as two open cutouts (13);

The said open side has edges (60) that are shaped to cut through the surface;

The back side of said base (12) connected perpendicular to said connecting frame (17) and near the bottom so that the base is directed just above the latching

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mechanism and along the opposite side of the extensions providing support when the vehicle is attached (Fig. 1).

Regarding claim 4, Navarro discloses an attachment (10) as described above, the inherent method of use comprising the steps of:

- a. Connecting a skidsteer loader (using 21 and 17) to an attachment (10) having a connecting frame (17), a base (12) shaped like a box and an open side,
- b. Moving the attachment (10) to the swimming pool wall and
- c. Raising the attachment (10) to near the top of the wall surface where the skimmer box is to be located;
- d. Inserting the open end of the base (12) of the attachment (10) with a cutting edge (60) into the wall and
- e. Raising the attachment (10) to remove the dirt and other items from the wall and thus forming the shape for the skimmer box (column 4 line 66 – column 5 line 3).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3671

4. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Navarro, US 6038795.

5. Regarding claim 2, Navarro discloses a digging attachment for securement to a work-type vehicle that could be used for constructing a skimmer box for a swimming pool, but fails to disclose the base (12) being in dimensions approximately 15 to 30 inches wide by 15 to 30 inches high by 15 to 30 inches deep. It would have been obvious matter of design choice to modify Navarro by having the base (12) be in dimensions approximately 15 to 30 inches wide by 15 to 30 inches high by 15 to 30 inches deep since applicant has not disclosed that having the base (12) be certain dimensions solves any stated problem or is for any particular purpose and it appears that the base would perform equally well being of any dimensions.

Furthermore, it would have been obvious to one of ordinary skill in the art to design the base (12) to be any suitable dimensions based on obvious use of the device.

Regarding claim 3, Navarro discloses a digging attachment for securement to a work-type vehicle that could be used for constructing a skimmer box for a swimming pool, but fails to disclose the base (12) being in dimensions approximately 24 inches wide by 28 inches high by 28 inches deep. It would have been obvious matter of design choice to modify Navarro by having the base (12) be in dimensions approximately 24 inches wide by 28 inches high by 28 inches deep since applicant has not disclosed that having the base (12) be certain dimensions solves any stated problem or is for any

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particular purpose and it appears that the base would perform equally well being of any dimensions.

Furthermore, it would have been obvious to one of ordinary skill in the art to design the base (12) to be any suitable dimensions based on obvious use of the device.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Toni Newville whose telephone number is (571) 272 - 1548. The examiner can normally be reached on Monday - Friday 8 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on (571) 272-6998. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Art Unit: 3671

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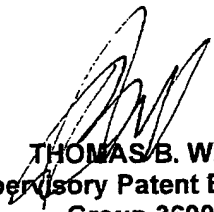


Application/Control Number: 10/758,516

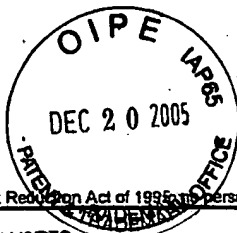
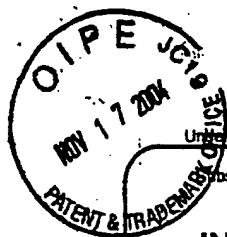
Page 6

Art Unit: 3671

Toni Newville  
September 13, 2005



**THOMAS B. WILL**  
Supervisory Patent Examiner  
Group 3600



PTO/SB/08A (08-03)

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Substitute for form 1449/PTO

**INFORMATION DISCLOSURE  
STATEMENT BY APPLICANT**

(Use as many sheets as necessary)

Sheet 1 of 1**Complete if Known**

Application Number	10/758,516
Filing Date	01/15/2004
First Named Inventor	Wolgast
Art Unit	3671
Examiner Name	
Attorney Docket Number	03-006

**U. S. PATENT DOCUMENTS**

Examiner Initials*	Cite No. <sup>1</sup>	Document Number	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		Number-Kind Code <sup>2</sup> (if known)			
TN	1	US- 5,819,444	10-13-1998	Desmarais	All
	2	US- 4,809,449	03-07-1989	Solaja	All
	3	US- 6,526,678 B2	03-04-2003	Waddington et al.	All
	4	US- 4,826,359	05-02-1989	Bec et al.	All
	5	US- 5,075,985	12-31-1991	Mensch et al.	All
	6	US- 3,028,698	04-10-1962	Schmitt	All
	7	US- 4,808,027	02-28-1989	Anderson	All
	8	US- 4,360,980	11-30-1982	Jarvis	All
	9	US- 3,523,380	08-11-1970	Bolyart et al.	All
	10	US- 5,713,418	02-03-1998	Warren et al.	All
	11	US- 6,139,223	10-31-2000	Snyder et al.	All
	12	US- 6,109,362	08-29-2000	Simpson et al.	All
	13	US- 3,471,953	10-14-1969	Wyatt	All
		US-			
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		US-			
		US-			

**FOREIGN PATENT DOCUMENTS**

Examiner Initials*	Cite No. <sup>1</sup>	Foreign Patent Document	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages Or Relevant Figures Appear	T <sup>6</sup>
		Country Code <sup>3</sup> Number <sup>4</sup> Kind Code <sup>5</sup> (if known)				

Examiner Signature	<u>EN</u>	Date Considered	<u>9-13-05</u>
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\*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant. <sup>1</sup> Applicant's unique citation designation number (optional). <sup>2</sup> See Kinds Codes of USPTO Patent Documents at [www.uspto.gov](http://www.uspto.gov) or MPEP 901.04. <sup>3</sup> Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). <sup>4</sup> For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. <sup>5</sup> Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST.16 if possible. <sup>6</sup> Applicant is to place a check mark here if English language translation is attached.

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# **Notice of References Cited**

DEC 20 2005

Application/Control No.

10/758,516

Applicant(s)/Patent Under  
Reexamination  
WOLLGAST ET AL.

Examiner

Toni Newville

Art Unit

3671

Page 1 of 1

## **U.S. PATENT DOCUMENTS**

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
	A	US-6,038,795	03-2000	Navarro, Pablo	37/341
	B	US-			
	C	US-			
	D	US-			
	E	US-			
	F	US-			
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

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*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

## **NON-PATENT DOCUMENTS**

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
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\*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)  
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